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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-85649; File No. SR-NYSE-2019-16]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Rule 7.31(i)(4) Relating to the Last Sale Peg Modifier

April 15, 2019

Pursuant to Section 19(b)(1)¹ of the Securities Exchange Act of 1934 (the “Act”)² and Rule 19b-4 thereunder,³ notice is hereby given that on April 2, 2019, New York Stock Exchange LLC (“NYSE” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7.31(i)(4) relating to the Last Sale Peg Modifier. The proposed rule change is available on the Exchange’s website at www.nyse.com, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

¹ 15 U.S.C.78s(b)(1).

² 15 U.S.C. 78a.

³ 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7.31(i)(4) relating to the Last Sale Peg Modifier, also referred to as a “Last Sale Peg Order.” Specifically, the Exchange proposes to specify a circumstance when the working price of a Last Sale Peg Order would not be adjusted.

Rule 7.31(i)(4) provides that a Last Sale Peg Order is a Non-Routable Limit Order to buy that will not trade or be displayed at a price higher than the last-sale price, which is the later of the most recent last-sale eligible trade⁴ executed on the Exchange or the most recent consolidated last-sale eligible trade.⁵ Rule 7.31(i)(4)(A) provides that the working price of a Last Sale Peg Order will be pegged to the lower of the last-sale price, the limit price of the order, or the PBO. The Last Sale Peg Order is available to buy Non-Routable Limit Orders only and is designed to assist member organizations in their compliance with the “safe harbor” provisions of Rule 10b-18 under the Act (“Rule 10b-18”) for issuer repurchases.⁶ One of the four provisions required to fall under Rule 10b-18’s safe harbor is that the purchase price of a security may not exceed the highest independent bid or the last independent transaction price for the security.⁷ Because a Last Sale Peg Order will not trade at a price that is higher than the last-sale price, member

⁴ A last-sale eligible trade must be of at least one round lot.

⁵ A consolidated last-sale eligible trade is the last-sale eligible trade reported to the responsible single plan processor.

⁶ See 17 CFR 240.10b-18. See also Securities Exchange Act Release No. 78679 (August 25, 2016), 81 FR 60080 (August 31, 2016) (SR-NYSE-2016-59).

⁷ See 17 CFR 240.10b-18(b)(3). The other three conditions relate to time of purchases, volume of purchases, and a requirement that only one broker or dealer be involved in such repurchases on a single day.

organizations can use this instruction to facilitate their compliance with at least one of the conditions of the safe harbor provision of Rule 10b-18.⁸

Rule 7.31(i)(4)(B) provides that the display price of a Last Sale Peg Order is the same as the working price, unless the working price is pegged to the PBO, in which case, the display price is determined under paragraph (e)(1) of Rule 7.31.⁹ The Exchange proposes to amend Rule 7.31(i)(4)(B) to further specify that the working price of a Last Sale Peg Order would not be adjusted if the PBO has adjusted to be equal to or lower than the working price of the Last Sale Order. As a Non-Routable Limit Order, a Last Sale Peg Order is subject to Rule 7.31(e)(1)(iii), which provides in part that if the PBO of an Away Market re-prices to be equal to or lower than a Non-Routable Limit Order's last display price, the order's display price will not change, but the working price will be adjusted to be equal to its display price. The Exchange proposes that if the PBO has adjusted in this manner, the working price of the Last Sale Peg Order would not change if the last-sale price adjusts to be the same or higher than the working price.

Accordingly, as amended, Rule 7.31(i)(4)(B) would provide that if the PBO has adjusted to be equal to or lower than the working price of the Last Sale Peg Order, the working price of such order would not change if the last-sale price adjusts to be the same or higher than the working price. The Exchange believes that this proposed amendment would simplify the operation of the Last-Sale Peg Order and eliminate the need for a price change that would not otherwise be required for such order to facilitate compliance with Rule 10b-18. This proposed

⁸ See Securities Exchange Act Release No. 85158 (February 15, 2019), 84 FR 5794 (February 22, 2019) (SR-NYSE-2018-52) ("NYSE Approval Order"). The Exchange does not represent that a Last Sale Peg Order is guaranteed to meet the requirements of the safe harbor provision of Rule 10b-18; rather, these instruction are available to member organizations to facilitate their own compliance with Rule 10b-18.

⁹ Rule 7.31(e)(1) describes how a Non-Routable Limit Order to buy that, at the time of entry and after trading with any sell orders in the Exchange Book priced at or below the PBO is priced.

amendment would not change the behavior of a Last-Sale Peg Order if the last-sale price adjusts lower. In such case, even if the PBO has adjusted to be equal to or lower than the working price of a Last Sale Peg Order, if the last-sale price adjusts to be lower than such working price, the working price of the Last Sale Peg Order would be adjusted.

For example, if the Away Market PBO is \$10.02 and the last-sale price is \$10.00, a Last Sale Peg Order to buy 1,000 shares with a limit price of \$10.05 will be assigned a working and display price of \$10.00, which is the same as the last-sale price. If the Away Market PBO updates to \$9.95, which is lower than the Last Sale Peg Order's working price, pursuant to Rule 7.31(e)(1)(iii), the Last Sale Peg Order would remain at \$10.00. If, while the PBO is \$9.95, there is an update of the last-sale price to \$10.02, with this proposed rule change, the Last Sale Peg Order would remain at \$10.00 and not be adjusted. By contrast, if, while the PBO is \$9.95, there is an update of the last-sale price to \$9.99, the working price of the Last Sale Peg Order would be adjusted to \$9.95, with a display price of \$9.94.¹⁰

The Exchange has not yet implemented Last Sale Peg Orders, which were recently approved.¹¹ The Exchange proposes that, subject to effectiveness of this proposed rule change, to implement this proposed rule change at the same time that it introduces Last Sale Peg Orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),¹² in general, and furthers the objectives of Section 6(b)(5),¹³ in particular,

¹⁰ See Rule 7.31(e)(1)(A).

¹¹ See NYSE Approval Order, *supra* note 8. The Exchange has announced that it will implement Last Sale Peg Orders on April 29, 2019. See Trader Update dated February 21, 2019, available here: https://www.nyse.com/publicdocs/nyse/markets/nyse/Pillar_Update_NYSE_Tape_A_NG_W_February_2019.pdf.

¹² 15 U.S.C. 78f(b).

because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that the proposal would remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest because it would specify in the Exchange's rules circumstances when a Last Sale Peg Order would not be re-priced. The proposed rule change would further remove impediments to and perfect the mechanism of a free and open market and a national market system because it would simplify operations by reducing the number of times a Last Sale Peg Order would be required to re-price while at the same time maintaining the order type's core functionality to facilitate compliance with Rule 10b-18. Because a Last Sale Peg Order will continue to not trade at a price that is higher than the last sale, member organizations can continue use Last Sale Peg Orders to facilitate their compliance with at least one of the conditions of the safe harbor provision of Rule 10b-18.¹⁴ Lastly, the Last Sale Peg Order was recently approved by the Commission¹⁵ and this proposal does not seek to amend its operation in any significant manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to have a competitive impact because it is intended to

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ See supra note 6.

¹⁵ See NYSE Approval Order, supra note 8.

simplify operations by reducing the number of times a Last Sale Peg Order would be required to reprice, while maintaining the core functionality of such order to facilitate compliance with Rule 10b-18. Nonetheless, the proposed rule change should promote competition by enhancing the Exchange's rules to provide greater specificity to market participants and improving the efficiency of the Exchange's order handling processes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁸ and Rule 19b-4(f)(6) thereunder.¹⁹

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b-4(f)(6)(iii)²⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the

¹⁶ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ 15 U.S.C. 78s(b)(3)(A).

¹⁹ 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

²⁰ 17 CFR 240.19b-4(f)(6)(iii).

public interest. The NYSE asked the Commission to waive the 30-day operative delay so that the Exchange. Specifically the Exchange noted that Last Sale Peg Orders were approved by the Commission on February 15, 2019,²¹ and intends to implement the orders on April 29, 2019.²² The Exchange represents that this proposed rule change does not seek to amend the operation of the Last Sale Peg Order in any significant manner and that the proposed rule change maintains the core functionality of this order type to facilitate issuer compliance with Exchange Act Rule 10b-18. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest, and accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.²³

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

²¹ See NYSE Approval Order, supra note 8.

²² See supra note 11.

²³ For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2019-16 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2019-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-NYSE-2019-16 and should be submitted on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Eduardo A. Aleman,
Deputy Secretary.

²⁴ 17 CFR 200.30-3(a)(12).

